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ABSTRACT

This document presents the state of Maine's rules of general applicability and specific rights of children who are receiving services from the Maine Department of Mental Health and Mental Retardation. The first section presents general rules concerning: statement of intent, definitions, basic rights, least restrictive appropriate treatment, notification of rights, assistance in the protection of rights, right to due process with regard to grievances, confidentiality and access to records, fair compensation for work, protection during experimentation and research, and freedom from unnecessary seclusion and restraint. The second section covers rights in inpatient and residential sections. These deal with: statement of intent, privacy and humane treatment environment, individualized treatment or service plan, informed consent to treatment, and free association and communication. The last section presents the rights of such individuals in outpatient settings. These include: statement of intent, individualized treatment or service plan, informed consent to treatment, and freedom from seclusion and restraint. (DB)

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Rights of Recipients of Mental Health Services Who Are Children in Need of Treatment

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RIGHTS OF RECIPIENTS OF SERVICES

WHO ARE

CHILDREN IN NEED OF TREATMENT

PART A

RULES OF GENERAL APPLICABILITY

MAINE DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION
BUREAU OF CHILDREN WITH SPECIAL NEEDS
STATE HOUSE STATION #40
AUGUSTA, MAINE 04333

BASIS STATEMENT

Recipients of mental health services who are children in need of treatment shall suffer no loss of basic human, legal and civil right.

These rules set forth the rights of patients/clients and provide procedural mechanisms to protect and enforce those rights. When children are unable to exercise their rights, it is anticipated that a parent or guardian will exercise them on the child's behalf.

These rules pertain to all agencies, facilities, or programs administered or funded by the Bureau of Children With Special Needs, or licensed by the Department of Mental Health and Mental Retardation, and to all state mental health institutes and non-state mental health institutions, which provide services to children in need of treatment.

Where different standards of care or treatment apply, it is the intent of these rules that the more stringent standard be deemed applicable.

Authority: 34-8 M.R.S.A. Section 6204 (6) (C)
Effective Date:

HMM/jrm
0170Q-15

INTRODUCTION

These rules are promulgated pursuant to the rulemaking authority granted to the Director of the Bureau of Children With Special Needs under 34-B MRSA Section 6204(6)(C).

These rules pertain to all agencies, facilities or programs administered or funded by the Bureau of Children with Special Needs or licensed by the Department of Mental Health and Mental Retardation and to all state mental health institutes and non-state mental health institutions which provide services to children in need of treatment.

Questions regarding the applicability or interpretation of these rules should be directed to the Director, Bureau of Children With Special Needs, Department of Mental Health and Mental Retardation, Station 40, State Office Building, Augusta, Maine 04333, Area Code (207) 289-4200.

These rules are effective on _____, 1989.

RIGHTS OF RECIPIENTS OF SERVICES WHO ARE CHILDREN IN NEED OF TREATMENT

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A. RULES OF GENERAL APPLICABILITY:

I. STATEMENT OF INTENT

The purpose of these rules is to articulate the rights of recipients of services who are children in need of treatment so that these rights may be enhanced and protected. Many children in need of services, particularly those who are very young or very disabled, cannot directly exercise their rights. In those cases, it is assumed that a parent or guardian will exercise the child's rights on behalf of the child.

Service recipients should suffer no loss of basic human or civil rights. Because of the circumstances under which such patients are treated, however, the exercise of some rights may require special safeguards. These rules, therefore, intend to keep recipients' rights paramount, to assure that individual rights will be both recognized and protected during the course of services delivery, and to ensure treatment consistent with ethical and professional standards. If two different standards could be applicable in determining care and treatment provided to any individual client - the law being these rules and federal, state, common law or federal or state administrative rules - the intent of these rules is that the more stringent standard should be applied. Procedural mechanisms that exist to ensure enforcement of these rules include the licensing authority of the Department of Mental Health and Mental Retardation pursuant to 34-B MRSA section 3606.

Part A, Rules of General Applicability which apply to all recipients, regardless of the treatment setting, should be read in conjunction with either Part B (for inpatient or residential settings) or Part C (for outpatient settings).

II. DEFINITIONS

A. Department means Department of Mental Health and Mental Retardation.

B. Bureau means the Bureau of Children With Special Needs.

C. Facility, Agency, or Program means any facility, agency or program administered or funded by the Bureau or licensed by the Department which provides services to children in need of treatment, including the Elizabeth Levinson Center, the state mental health institutes and non-state mental health institutions and the Bath Military & Naval Children's Home.

D. Mental Health Institute means state-operated inpatient facilities.

E. Non-state Mental Health Institution means a public institution, a private institution or a mental health center as defined by 34-B MRSA, section 3801 (6).

F. Recipient means any child in need of services as defined by 34-B 6201(2) receiving treatment from any facility, agency or program.

G. Emancipated minor means a minor who has been emancipated by court order pursuant to 15 M.R.S.A. sec. 3506-A. Unless specifically indicated otherwise, an emancipated minor has the same rights, privileges and responsibilities as an adult recipient under the rules Rights of Recipients of Mental Health Services.

H. Treatment Team means those persons, including the recipient, who plan, carry out and review treatment.

I. Treatment means the provision of services to children in need of treatment and their families as defined by 34-B MRSA section 6201(3), the services consisting primarily of: A. psychiatric, psychological, counseling, developmental, and other therapeutic modalities; B. Social interpersonal and other living skills, related supportive services and habilitative training.

J. Rights Protection and Advocacy Service of the Maine Mental Health System means the Office of Advocacy of the Department or another governmental agency authorized to investigate grievances and protect rights.

K. Representative means any person who has been designated in writing by an emancipated recipient, or by his guardian or by his legally responsible parent to act to aid the recipient in upholding his rights under these rules. Such person shall not be a patient of or a staff person currently employed in an inpatient facility.

L. Program Area means any discrete part of a facility or agency, including any building, residential program, ward, unit or program site.

III. BASIC RIGHTS

A. Recipients have the same human, civil and legal rights accorded all minor citizens. Recipients have the right to a humane psychological and physical environment within the facility or program. Recipients have the right to be treated with courtesy and with full respect for individuality and dignity. Recipients have the right to have their privacy assured and protected to the greatest extent possible in light of their treatment needs. Recipients shall not be found incapacitated nor denied any right, benefit, privilege, franchise, license, authority or capacity of whatever nature that they would otherwise have simply due to their status as recipients of mental health services.

B. There shall be no limitation on the freedom of religious belief.

C. Discrimination in the provision of services due to race, creed, sex, national origin, political belief, or handicapping condition shall be prohibited.

D. All basic rights of recipients and of legally responsible parents or guardians shall remain intact unless specifically limited through legal proceedings, as in the case of guardianship; or, in an emergency, or when necessary to protect the rights or safety of the recipient or others, only as outlined in specific sections of these rules.

IV. LEAST RESTRICTIVE APPROPRIATE TREATMENT

A. Recipients have the right to be treated in the least restrictive appropriate manner or setting to meet their needs.

B. No recipient shall be held in treatment against his or her will by policy, procedure or practice, except by order of court or by emergency hospitalization procedures.

C. Agencies or facilities proposing persons for commitment shall first fully consider less restrictive appropriate settings and treatment modalities pursuant to 34-B MRSA section 3864(5).

D. Recipients shall be free from involuntary hospitalization provisions utilized only as a means to accomplish admission, to obtain transportation, or for administrative reasons.

V. NOTIFICATION OF RIGHTS

A. Recipients and their parents or legal guardians have the right to be notified of all rights accorded recipients of services, by Maine statute, these rules, and by associated policy.

B. At the time of admission or intake, or as soon afterwards as is reasonably feasible, each recipient and his parent or legal guardian shall be informed, to the extent possible, of the recipient's rights under these rules in terms that are understandable.

1. Such information shall be given in an age appropriate manner designed to be comprehensible to the individual receiving the information by an employee of the facility or program.

2. In cases where the recipient does not understand English or is deaf, the notification of rights shall be conducted by an interpreter.

3. If the recipient's condition at admission or intake precludes understanding of his rights, additional attempts to provide such information shall occur.

4. Documentation of the results of such discussion shall be noted in the recipient's permanent treatment record.

C. At the time of admission or intake, each recipient shall be given a summary of these recipient rights written in plain language.

1. Copies of such summary shall also be given to:

   a. The recipient's guardian or legally responsible parent; or,

   b. In the case of any recipient without a guardian or legally responsible parent, up to three individuals, if designated by the recipient concerned.

2. Those persons, including the recipient, given copies of summaries shall be noted in the medical record.

3. Copies of such summaries shall be conspicuously posted in all agencies, facilities, and program areas.

4. Such summaries shall contain instructions for viewing this document and associated policies developed to implement these regulations.

5. Such summaries shall be made available in foreign languages, if necessary.

D. Each program area shall have complete copies of these recipient rights rules and associated agency policies. Such copies shall be made available for review to any person upon request. Additional copies of this document shall be available from the Bureau of Children With Special Needs, Station 40, State Office Building, Augusta, Maine 04333.

E. The Office of Advocacy shall have copies of all statutes referenced in these rules. Such statutes shall be available for review during regular working hours at the Office of Advocacy, Station 40, State Office Building, Augusta, Maine, 04333.

VI. ASSISTANCE IN THE PROTECTION OF RIGHTS

A. Recipients have the right to assistance in the protection of their rights.

B. Right to Name Recipient Representative. Emancipated minor recipients and guardians and legally responsible parents of other minor recipients have the right to name a representative, in writing, to uphold the rights of the recipient. Such aid shall include one or more of the following activities: assistance in the formulation and processing of a grievance, participation in the informal or formal development and revision of a treatment or discharge plan, and/or any other type of representative assistance activity referenced in these rules. The provision of such aid by a designated representative shall be governed by this section and by other relevant sections of these rules.

C. Notification. Each agency, facility or program shall inform each recipient and any guardian or legally responsible parent of the recipient's right to assistance. All emancipated minor recipients, guardians, or legally responsible parents shall be notified of their right to name a representative.

1. Designation in writing. If an emancipated minor recipient or his guardian or legally responsible parent of any other recipient desires a representative for the recipient, he shall designate, in writing, a person to aid the recipient in upholding his rights.

2. Time for designation. The emancipated minor recipient or his guardian or legally responsible parent of any other recipient may designate a representative at admission or at any time thereafter.

3. Change in representative. Provision shall be made for change of representative should the emancipated minor recipient or the guardian or legally responsible patient of any other recipient so desire.

4. Representative's physical access. The representative shall have reasonable access to all living and program areas and to staff involved in the treatment of the recipient in order to assist the recipient in the protection of his rights.

5. Confidentiality. The representative may obtain access to confidential information as defined under 34B MRSA Section 1207 concerning the recipient by obtaining the appropriate parties written informed consent to such disclosure under Section XI of these rules.

6. Communication. Reasonable time shall be developed within a facility given the structure and programming for an emancipated minor recipient to have access to a telephone to contact his representative.

7. Involvement in Treatment and Discharge Planning.

   a. The recipient representative shall be included, if requested by the emancipated minor recipient or the guardian or legally responsible parent of any other recipient and if the representative is available, in the development or revision of the treatment plan unless clinically contraindicated pursuant to Section IV (Inpatient and Residential Settings) and Section II (Outpatient Settings) of these rules. Such involvement may include, without limitation, participation in treatment meetings, alternative treatment meetings or discharge planning meetings. A good faith effort shall be made to give the representative 24 hour notice of any treatment team meeting.

   b. The representative shall be notified when the recipient is determined to lack clinical capacity pursuant to Section IV, Part B (Inpatient and Residential Settings) or Section II, Part C (Outpatient Settings) of these rules.

   c. The representative shall receive a copy of prescribed medication, dosage levels, schedules and side-effects and a copy of the aftercare plan upon the discharge of the recipient, if the emancipated recipient or the guardian or legally responsible parent of any other recipient requests it pursuant to Section IV, Part B (Inpatient and Residential Settings) or Section II, Part C (Outpatient Settings) of these rules.

D. Protection and Advocacy Services. Each recipient and his guardian or legally responsible parent, if any, shall be informed of governmental rights protection and advocacy services available in the state. Recipients and their guardian or parents have the right to request assistance from the State's governmental rights protection and advocacy service at any time. Such services are available through:

1. The Office of Advocacy of the Department, which is mandated by State law to investigate the claims and grievances of recipients of services provided by the Department and to monitor the compliance of any facility or agency administered by the Department with all laws, rules, and policies relating to the rights and dignity of service recipients.

2. Other governmental agencies including the Protection and Advocacy Agency for the Disabled and Maine Human Rights Commission.

E. Recipients may be represented by a private advocate. The guardian or legally responsible parent of an unemancipated minor must authorize and bear the expense of representation by a private advocate.

F. A summary of formal grievances reported to the Office of Advocacy shall be compiled yearly and submitted to the Bureau of Children With Special Needs and the State Legislature, and shall be available to the public during regular working hours at the Office of Advocacy, Station 40, State Office Building, Augusta, Maine 04333.

VII. RIGHT TO DUE PROCESS WITH REGARD TO GRIEVANCES

A. Recipients have the right to due process with regard to grievances.

B. Notwithstanding any other civil or criminal recourse the person bringing the grievance may have, the facility, agency, and/or department shall afford every reasonable opportunity for informal resolution of concerns or formal resolution of grievances.

C. Recipients or other persons may bring grievances regarding possible violations of basic rights, including any rights enumerated in these rules, any questionable or inappropriate treatment or method of treatment, any policy or procedure or action, or lack thereof, of the agency or facility under these rules.

D. Persons who may bring grievances include, but are not limited to:

1. The recipient; if a recipient files a grievance, his legally responsible parent or guardian shall be notified;

2. The recipient's guardian or legally responsible parent;

3. The recipient's attorney, designated representative or representative of a state governmental rights protection or advocacy agency;

4. Other persons specifically aggrieved.

E. A grievant shall in no way be subject to disciplinary action, reprisal or loss of privileges or service as a result of filing a grievance.

F. Notice

1. Notices summarizing a grievant's right to due process in regard to grievances, including the process by which grievances may be filed, as well as copies of forms to be used for that purpose, shall be available within each program area.

2. Each recipient and his legally responsible parent or guardian shall be informed of this right, in a manner designed to be comprehensible to the individual, by an employee of the facility, agency or program.

G. Formal Grievances

1. A grievance may be undertaken by a grievant making a formal written claim that provisions of these rules have been violated by any facility, agency or program.

   a. Grievances regarding the actions of specific employees shall be handled in accordance with personnel rules and contract provisions.

2. Formal grievances may be appealed through four sequential levels.

   a. Supervisor of Program or Unit;

   b. Administrator of Facility or Agency;

   c. Director of Bureau; and,

   d. Commissioner of Department.

3. Additional levels of grievance resolution may be added by agency or facility policy, but in no case shall such additional levels add to the overall time allotted for grievance resolution.

4. At each level of the formal grievance procedure the recipient or other grievant shall have the following rights:

   a. Representation by an advocate from the state office of advocacy service;

   b. Review of any information obtained in the processing of the grievance, except that which would violate the confidentiality of another person;

   c. Presentation of evidence or witnesses pertinent to the grievance;

d. Receipt of complete findings and recommendation; except that which would violate the confidentiality of another person.

5. An electronic or written record shall be made of all proceedings associated with formal grievances. An electronic recording shall be made of any hearing held pursuant to this section.

6. Burden of Proof: In all grievances the burden of proof shall be on the agency, facility or program to show compliance, or remedial action to comply with the policies and procedures established to assure the rights of recipients under these rules.

7. Findings. Findings shall include:

   a. Determination regarding the facility, agency or program adherence, or failure to adhere, to specific policies or procedures designed to assure the rights of recipients under these rules;

   b. Facts upon which findings were based; and,

   c. Specific remedial steps, where required, to be followed to assure compliance with such policies and procedures.

8. Upon appeal, all pertinent information gathered regarding a formal grievance shall be forwarded, by the person to whom the grievance was addressed, to the next responsible official.

9. Steps of Formal Grievances:

   a. Level One

      i. Formal grievances shall be filed first with the supervisor of the service delivery unit in which the grievance arises.
      ii. Copies of the grievances shall be forwarded to the administrative head of the facility or agency and upon the request of the grievant, to the Office of Advocacy. In the case of state operated facilities, all formal grievances shall be immediately forwarded to the Office of Advocacy.
      iii. A formal written response shall be made within five days, excluding weekends and holidays.
      iv. If the agency staff needs a longer period to investigate the circumstances of the grievance, a five (5) day extension may be made and the grievant so notified.
      v. If the grievant is unsatisfied with the findings at the first level, he or she may appeal the decision to the Chief Administrative Officer of the facility or agency.
      vi. Such appeal must be made within ten (10) days, excluding weekends and holidays.
      vii. Copies of such appeal shall be forwarded to the Office of Advocacy.

b. Level Two

i. The Chief Administrative Officer or designee shall respond to a Level Two grievance within five (5) days, excluding weekends and holidays, of day of receipt of the appeal.
ii. If the Chief Administrative Officer or designee needs a longer period to investigate the circumstances of the grievance, a five (5) day extension may be made with the permission of the parties to such a grievance.

iii. The Chief Administrative Officer or designee may, at his or her discretion, hold a hearing with all parties involved.
iv. If the grievant is dissatisfied with the finding at Level Two, he or she may appeal the decision to Level Three to the Director of the Bureau of Children With Special Needs, State Office Building, Station 40, Augusta, Maine 04333. Appeals must be made within ten (10) days, excluding weekends and holidays.

c. Level Three

i. The Director of the Bureau or designee shall make a formal written reply within five (5) days, excluding weekends and holidays.
ii. If no hearing was held at Level Two a hearing shall be held at Level Three.
iii. A five day continuance may occur if a hearing is to be held or if the parties to such a grievance concur.
iv. If the grievant is dissatisfied with the findings of the Director of the Bureau, or designee he or she may request review of the findings by the Commissioner of the Department or designee. Appeals must be made within ten (10) days, excluding weekends and holidays.

d. Level Four

i. The Commissioner or designee shall have five (5) days, excluding weekends and holidays, to formulate a written reply.
ii. Such finding shall constitute the final action by the Department regarding a grievance.

H. The Commissioner's decision shall constitute final agency action and the grievant may appeal the decision to Superior Court pursuant to the Maine Administrative Procedure Act, 5 MRSA s 11001 et seq.

I. Exceptions

1. Grievances regarding abuse, exploitation, or neglect.

a. Any allegation of abuse, exploitation or neglect shall be immediately reported to the Chief Administrative Officer of the facility or agency, to the Office of Advocacy and the required investigatory agency pursuant to the Child and Family Services and Child Protection Act (22 MRSA Chapter 1071 s 4001).

b. Investigation of any such allegation shall be conducted pursuant to statutory and regulatory standards including those relating to the Child and Family Services and Child Protection Act (22 M.R.S.A. Chapter 1071 s 4001 et seq.) and facility policy approved by the Department.

2. Urgent Grievances

a. Any grievance which the grievant considers urgent shall be forwarded by staff within one working day to the Chief Administrative Officer of the facility or agency, or designee, at Level Two, and the Office of Advocacy so notified.

i. Such grievances must be reviewed by the Chief Administrative Officer or designee, who shall either arrange to hear the grievance within 3 working days or immediately refer the grievance to Level 1 for response.
ii. Grievances referred back to Level 1 for response shall stipulate in writing the reason(s) that the grievance was determined not to warrant urgent consideration.

3. Grievances Without Apparent Merit

a. A grievance may be found to be without apparent merit, upon Level Two review, upon the concurrence of the Chief Administrative Office and the representative of the rights protection and advocacy service.

b. Such decision and justification for such decision shall be forwarded to the grievant in writing, and shall include notice of other avenues of redress.

c. Grievances without apparent merit may not be appealed administratively beyond Level Two.

VIII. CONFIDENTIALITY AND ACCESS TO RECORDS

A. Recipients have the right to confidentiality and to access to their record.

B. All information regarding mental health care and treatment shall be confidential except as otherwise provided below.

C. A legally emancipated recipient and an unemancipated recipient's guardian or legally responsible parent shall be notified, upon admission or intake to any facility or program of:

1. what records will be kept, including any duplicate records;

2. how the recipient and guardian may see those records;

3. the use to which the records will be put;

4. what will happen to the record after the recipient leaves the facility or program;

5. how to add information to records;

6. how to obtain copies of materials in records; and,

7. the limits of confidentiality, as provided in J below.

D. A legally emancipated recipient or the legal guardian or legally responsible parent of an unemancipated minor recipient shall be informed when the possibility exists that the costs of the recipient's care, treatment, education or support will be borne by a third party. Such information shall indicate that clinical information may be used to substantiate charges. The emancipated recipient or the legal guardian or parent of an unemancipated recipient may indicate that he or she will bear such costs privately rather than allow the release of information.

E. A legally emancipated recipient or the legal guardian or legally responsible parent of an unemancipated recipient shall have the right to written and informed consent prior to release of any information to any agency or individual not directly involved in the recipient's treatment or supervision thereof, except as provided in J below. Such informed consent shall include:

1. Identification of the specific information to be disclosed;

2. Notice of the right to review mental health records upon request at any reasonable time including prior to the authorized release of such records;

3. The name of persons or agencies to whom disclosure is to be made;

4. The purpose to which the information is to be put;

5. The length of time within which the information is to be disclosed not to exceed one year; and

6. Notice of the right to revoke consent to release at any time.

F. A legally emancipated recipient or an unemancipated recipient's legally responsible parent or guardian has the right to written informed consent for release of case record material which discloses the recipient's identity to students when they temporarily become a part of treatment team, except when the student is involved in a professional program which has a formal relationship with the facility or agency.

G. All personnel of agencies or programs, including students or trainees, shall be trained regarding confidentiality and shall be held to confidentiality statutes, rules and policies.

H. Duplication:

1. If the facility or agency duplicates a portion of, or the entire care record of a recipient pursuant to any exception contained in J(1)(a) through e below a legally emancipated recipient or his legally responsible parent or guardian shall be notified, if possible, as to the purpose of such duplication.

2. Copies of original records shall be noted as such.

I. Separate personalized records shall be maintained when group treatment methods are employed. Cojoint records of treatment activity shall not be maintained.

J. Exceptions:

1. Information may be released without written informed consent, as provided by Maine statute (Section 34-B M.R.S.A. section. 1207, Sub-sections 1B and 1C) in the following circumstances:

a. Disclosure may occur as necessary to carry out the statutory functions of the department or statutory hospitalization provisions.

b. Disclosure may be made as necessary to allow investigation by the Protection and Advocacy Agency for the Disabled in Maine, or the Office of Advocacy.

i. Disclosure may be made to the Department of Human Services to cooperate in a child protective investigation or other child protective activity pursuant to an interdepartmental agreement promulgated as a rule by the Department of Mental Health and Mental Retardation.

c. Disclosure may be ordered by a court of record subject to any limitations contained within the Maine Rules of Evidence.

d. Disclosure may be allowed of biographical or medical information concerning the recipient to commercial or governmental insurers of any other corporation, association or agency from which the Department or licensee of the Department may receive reimbursement for the care, treatment, education, training or support of the recipient.

i. Such disclosure may be made only after determination by the Chief Administrative Officer of the facility or designee that the information to be disclosed is necessary and appropriate.

e. Disclosure of information, including recorded or transcribed diagnostic or therapeutic interviews concerning any recipient may be allowed in connection with any educational or training program established between a public hospital and any college, university, hospital, psychiatric counseling clinic or school of nursing, provided that in the disclosure or use of any such information as part of a course of instruction or training the recipient's identity shall remain undisclosed.

i. Such disclosure shall be conducted according to uniform standards consistent with deidentification.

f. Disclosure may be made to persons involved in statistical compilation or research conducted in compliance with these rules pursuant to Section IX.

i. In the case of such disclosure records shall not be removed from the facility and reports shall preserve the anonymity of the recipient. Data which do not identify the recipient, or coded data, may be removed from the facility, provided the key to such code shall remain at the facility.

2. Information regarding the status and medical care of a recipient may be released by a professional, upon inquiry by law enforcement officials or treatment personnel, if an emergency situation exists regarding the recipient's health or safety.

3. Confidentiality may be breached if there is clear and substantial reason to believe that there is imminent danger of serious physical harm inflicted by the recipient on him or herself or upon another.

a. Information regarding such danger of harm shall be immediately given to supervisory personnel or appropriate professionals, civil authorities, and any specific person threatened by direct harm.

K. Recipient Access to Records

1. The recipient and the recipient's guardian or legally responsible parent has the right to review the recipient's record at any reasonable time upon request, including prior to its authorized release. Such records shall be made available within three working days of such request.

2. Review of the case record shall occur under the supervision of a designee of the Chief Administrative Officer of the facility or program.

3. In cases where there exists a reasonable concern of possible harmful effect to the recipient if the review of the recipient or his guardian or legally responsible parent occurs, the Clinical Director or designee shall supervise the review.

   a. In cases where access of the guardian or legally responsible parent to the recipient's record would create documented danger to the physical or mental well being of the recipient, the professional may refuse to disclose a portion of or the entire record to the guardian or legally responsible parent.

   b. Written documentation shall be placed in the recipient's record in the event that access to the record or any portion of it is denied based on the above and the reasons for denial.

4. In cases where a recipient is unable to review the record at the program site, a certified copy of the record shall be forwarded to a professional, designated by the recipient, in the recipient's area, who shall supervise review of the record.

5. In cases where the recipient or his guardian or legally responsible parent, after review of the recipient's record, requests copies of the record, or parts of the record, such copies shall be made available to the recipient, guardian or parent at the actual cost of reproduction.

6. A recipient may add written material to his or her record in order to clarify information which he or she feels is false, inaccurate or incomplete.

7. Material which was obtained from another individual or facility through assurance of confidentiality shall not be available to the recipient or guardian or parent in reviewing the recipient's record. A summary description of such material shall be provided to the recipient or guardian or parent, and information shall be provided regarding the process to gain access to such material including aid in securing appropriate release of information.

IX. FAIR COMPENSATION FOR WORK

A. Recipients have the right to be paid a fair wage for work done.

1. Each individual or agency subject to the provisions of these regulations shall pay at least the minimum wage to each recipient who performs work regardless of level of performance, regardless of whether or not the work is considered therapeutic, and regardless of whether or not the recipient replaces or would replace a non-recipient worker.

2. Agencies shall compensate any recipient performing any work which is similar or identical to that performed by a non-recipient employee at the same rate as such non-recipient employee is compensated.

B. Definitions. For purposes of this section, the following definitions shall apply:

1. Work shall mean any work having consequential economic benefit to the mental health agency, including any activity involved in the care, maintenance, and operation of the mental health agency.

2. Work shall not mean those tasks performed by each recipient for his or her own basic care or hygiene or upkeep of personal living space.

3. Federal law shall mean the Fair Labor Standards Act which sets national labor standards.

4. Minimum wage shall mean that hourly rate of pay established by the United States Congress or by the State of Maine, whichever is higher, as the legal minimum.

C. Agencies shall not directly or indirectly compel a recipient to perform any work, or punish any recipient for declining to perform work. Agencies shall not make any privilege or agency service conditional upon a recipient's agreement to perform work or withdraw a recipient's privileges or services because of that recipient's failure to perform work.

D. Agencies shall not discriminate in the hiring of agency staff. Any recipient is eligible to apply for and occupy, if qualified, any job classification.

E. Exceptions:

1. Agencies and service providers subjected to these regulations may pay a sub-minimum wage to a recipient who performs work after proper certification has been made by the United States Department of Labor under Handicapped Worker provisions contained in federal law.

2. Payment for work shall not be required when a recipient is a participant in an independent living program which requires a fair division of labor among all participants, including community-based psychosocial clubs and transitional living facilities, or in community-based transitional employment programs.

X. PROTECTION DURING EXPERIMENTATION AND RESEARCH

A. Recipients have the right to refuse to participate in experimentation and research.

B. All participation in experimentation and research shall be voluntary with full written informed consent, except as provided in these rules.

C. A recipient's refusal to participate in a research project or an experimental activity shall not be cause for denying the provision of indicated services to that recipient.

D. Definitions

1. Experimentation and research

a. Experimentation and research means the use of any medical, behavioral, or environmental intervention involving practices not commonly accepted by the discipline involved, or the systematic accumulation and codification of data designed to develop or contribute to general knowledge.

b. Experimental drug use means:

i. the use of any Food and Drug Administration non-approved drug.

2. Informed consent means the agreement obtained from a subject, or from his authorized representative, to participate in an activity. Informed consent requires that subjects understand the purpose, benefits and risks of research in which they are asked to participate and are given the opportunity to consent to, reject, or withdraw from participation without penalty. Informed consent shall be delivered in accordance with applicable federal law governing requirements for permission by parents or guardians for assent by children; and specifications regarding participation of children who are wards (see 45 CFR 46).

3. Minimal risk means that the risk of harm anticipated in the proposed research or experimentation is not greater, considering probability and magnitude, than that ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tasks.

4. Board means the Research and Experimentation Review Board.

E. Research and Experimentation Review Board Membership

1. A Research and Experimentation Review Board, selected by the administrative head of the particular facility or agency, shall have at least five members with varying backgrounds, in order to promote complete and adequate review of research and experimental activities proposed for consideration.

2. The Board shall be sufficiently qualified, through the experience and expertise of its members and the diversity of the members' backgrounds, to promote respect for its advice and counsel in safeguarding the rights and welfare of human subjects.

3. In addition to possessing the professional competence necessary to review such activities, the Board shall be able to ascertain the acceptability of proposed research or experimentation in terms of institutional commitments, regulations, applicable law, and standards of professional conduct and practice.

4. The Board shall consist of interdisciplinary members of both sexes including at least one member whose primary concerns are in non-scientific areas, such as law, ethics or theology, and at least one member who is not otherwise affiliated with the institution or agency proposing the research or experimentation.

5. No Board member may participate in the Board's initial or continuing review of any project in which the member has a conflicting interest, except to provide information requested by the Board.

6. At the Board's discretion, individuals with competence in special areas may be invited to assist in the review of complex issues which require expertise beyond or in addition to that available on the Board. These individuals may not vote.

F. General Procedures

1. All experimentation and research shall commence only after review and approval by the Research and Experimentation Review Board.

2. The Research and Experimentation Review Board shall have the authority to approve, require modifications in, or disapprove, any proposed research or experimentation activities.

3. The Rights Protection or Advocacy Services of the Maine mental health system shall be informed of any proposed experimentation or research involving more than minimal risk.

4. The Board shall maintain adequate documentation of its activities.

5. The Board shall provide written notification of its approval or disapproval of the proposed research or experimentation activity, or of any modifications required to secure research and experimentation review board approval of any activity in question.

6. If the Board decides to disapprove a research or experimentation activity, it shall include, in its written notification, a statement of the reasons for its decision and give the investigator an opportunity to respond in person or in writing.

7. Investigators and others directly involved in the research or experimentation shall, both in obtaining the consent and in conducting research, adhere to the ethical and research standards of their respective professions concerning the conduct of research or experimentation and to the regulations for research involving human subjects required by the U.S. Department of Health and Human Services in effect at the time of the adoption of these rules.

8. Researchers must report substantial changes or unanticipated problems immediately to the Chairperson of the Board.

9. The Board shall conduct continuing review of research covered by these regulations at intervals appropriate to the degree of risk, but not less than once a year, and shall have authority to observe or have a third party observe the consent process and research.

10. The Board shall have the authority to suspend or terminate approval of research that is not being conducted in accordance with the Board's requirements, these rules, or that has been associated with unexpected harm to subjects. Any suspension or termination of approval shall include a statement of the reasons for the Board's action and shall be reported promptlyto the investigator, appropriate institutional officials, and the secretary of the Department of Health and Human Services as required by federal regulations.

11. Upon completion of the research and/or experimentation procedures the principal investigator shall attempt to remove any confusion, stress, physical discomfort, or other harmful consequences that may have been inadvertently produced as a result of the research or experimentation procedures.

G. Criteria for Board Approval of Research and Experimentation. In order to approve research covered by these regulations the Board shall determine that all of the following requirements are satisfied:

1. Risks to subjects are minimized by using procedures which are consistent with sound research or experimentation design and which do not unnecessarily expose subjects to risk and, wherever appropriate, by using procedures already being performed on the subject for diagnostic or treatment purposes.

2. Risks to subjects are reasonable in relationship to anticipated benefits to subjects. In evaluating risks and benefits, the Board shall consider only those risks and benefits that may result from the research and experimentation, as distinguished from the risks and benefits of therapy these subjects would receive in not participating in the research, or possible long-range benefits of applying knowledge gained in the research.

3. Selection of subjects is equitable, taking into account the purposes of the research and the setting in which the research will be conducted.

4. Informed consent will be sought and appropriately documented in accordance with these rules.

5. The research or experimentation plan makes adequate provisions for monitoring the data collected or the activities allowed to ensure the safety of the subjects.

6. There are adequate provisions to protect the privacy of subjects and to maintain the confidentiality of data.

7. Where some or all of the subjects are likely to be vulnerable to coercion or undue influence, appropriate additional safeguards have been included in the project to protect the rights and welfare of these subjects.

H. Special Procedures; Exceptions to Informed Consent

1. Research involving the Need for Non-disclosure

a. If the research or experimentation methodology requires that the purpose, nature, expected outcome and/or implications of the research not be disclosed to the participants before it begins, the researcher shall clearly and vigorously justify to the Research and Experimentation Review Board the need for non-disclosure.

b. The Board may approve research or experimentation procedures which do not include, or which alter, some or all of the elements of informed consent set forth in these rules, or waive the requirements to obtain informed consent provided the Board finds and documents that:

i. the research involves no more than minimal risks to the subjects;
ii. the waiver or alteration will not adversely affect the rights and welfare of the subjects;
iii. the research or experimentation could not practicably be carried out without the waiver or alteration; and,
iv. whenever appropriate, the subjects will be provided with full disclosure or additional pertinent information after the research or experimentation project is completed.

2. Research Involving Archival Review, Statistical Compilation or Record Review.

   a. Research which is limited to archival review, statistical compilation or record review may be carried out pursuant to Title 34, M.R.S.A., Section 1207(2). Such research may be carried out without informed consent provided that:

      i. said research is reviewed and approved by a Research and Experimentation Review Board;
      ii. all data involved in said research shall not be identifiable as to individual recipients of services;
      iii. the research plan shall be submitted to, and approved by, the head of the mental health facility or his designee.

3. Research Involving Minors, Persons Unable to Give Informed Consent, and Involuntary Recipients.

   a. No experimentation or research involving more than minimal risks shall be conducted with persons unable to give informed consent, minors, or involuntary patients unless:

      i. the experimentation or research poses a clearly expected benefit to the individual recipient involved; and,
      ii. the experimentation or research has been reviewed and approved by the Research and Experimentation Review Board.

   b. In the case of recipients under the age of 18 and in the case of recipients adjudicated incapacitated, consent must be obtained from the recipient's legal guardian, and such consent must be reviewed by the Rights Protection and Advocacy Services within the state mental health care system.

   c. In the case of minor recipients over the age of 12, informed consent must also be obtained from the prospective recipient participant.

4. Utilization of Approved Food and Drug Administration Drugs for unlabeled uses.

   a. Any use of drugs approved by the Food and Drug Administration, when applied in an unlabeled manner, shall receive prior approval from the Clinical Director or equivalent.

I. Applicability

1. Questions regarding the applicability of this section to specific recipients or activities shall be referred in writing to the Chairperson of the Research & Experimentation Board who shall determine applicability.

2. Where disagreement continues to exist, questions may be presented through the Grievance Procedure, Section VI.

3. In issues regarding professional standards, referral of the question may be made to the appropriate national professional standards committee whose decision shall be final and binding.

XI. FREEDOM FROM UNNECESSARY SECLUSION AND RESTRAINT

A. Recipients have the right to freedom from unnecessary seclusion and restraint.

B. Definitions

1. Seclusion shall mean the placement of a recipient in an isolation room.

2. Restraint shall mean the application of any physical means of restricting bodily movement.

C. Seclusion and restraint shall not be employed as punishment or for the convenience of the staff.

D. Physical restraint and seclusion shall impose the least possible restriction consistent with their purpose;

1. seclusion and restraint may be used only after less restrictive measures have proven to be inappropriate or ineffective; and,

2. documentation describes less restrictive methods used and their results.

E. Seclusion or restraint shall not be used in a manner that causes undue discomfort, harm, pain or humiliation to the recipient; and, seclusion rooms shall be adequately lighted, heated, and ventilated.

F. Seclusion or restraint may be deemed necessary and employed only in an emergency situation as defined in Parts B and C, Section V(E) or as part of an individualized treatment plan, pursuant to Parts B and C, Sections I and II, respectively, of these rules.

G. Staff who implement authorizations for seclusion or restraint shall have documented training in the proper use of the procedure for which the order is given.

H. Emergency Seclusion and Restraint

1. Use. Seclusion or restraint may be deemed necessary and employed only to prevent a recipient from causing physical harm to himself or others or to prevent serious disruption of the treatment environment.

2. Authorization for Emergency Seclusion and Restraint

   a. Adequately trained staff may employ necessary emergency measures of seclusion and restraint only if physical harm to the recipient or others is imminent. In all such cases consultation with a licensed or certified mental health professional shall be sought immediately and obtained within fifteen (15) minutes.
      i. In inpatient facilities such professional shall then seek authorization from a physician forthwith.

3. Reevaluation for continuation. Such use of seclusion and restraint shall be professionally reevaluated every two hours, and reauthorized by a physician every twenty-four hours.

4. Documentation. A copy of documentation in the recipient's permanent treatment record regarding use of emergency seclusion or restraint shall be immediately forwarded to the resident advocate. Such documentation shall include but not be limited to:

   a. a factual description, not just conclusory statements of the emergency situation and attempts to utilize less restrictive treatment alternatives; and,

   b. authorization and any reauthorization by the physician or licensed or certified mental health profession pursuant to section H.2.a. and H.3. above.

I. Seclusion or Restraint as a part of a Treatment Plan.

1. Use. Seclusion or Restraint may be deemed necessary and employed as a part of a treatment plan.

2. Authorization. The use of seclusion and restraint as a part of a treatment plan must be approved in writing by the Clinical Director or equivalent or his or her designee upon the recommendation of the recipient's treatment team. All such plans shall be time-limited.

3. Review and Reauthorization.

   a. In inpatient facilities the use of seclusion and restraint as a part of a treatment plan shall be reviewed and reauthorized daily by a physician.

b. At least every ten days the treatment team shall review the effectiveness of seclusion and restraint as a treatment modality.

4. Therapeutic Use and Review with Recipient. Immediately following release from seclusion or restraint or as soon after as clinically appropriate the experience and circumstances shall be reviewed with the recipient as appropriate to the recipient's age and level of functioning.

5. Documentation. documentation in the recipient's permanent treatment record regarding use of seclusion or restraint as part of a treatment plan shall include at least:

a. rationale for inclusion in the treatment plan including attempts to utilize less restrictive treatment alternatives and consideration of alternative treatment programs;

b. repeated use of seclusion or restraint shall require that a portion of the recipient's treatment plan address the problems and conditions making seclusion and/or restraint necessary;

c. authorization by the Clinical Director or equivalent or his or her designee;

d. reviews and reauthorization.

J. Additional procedures. For any use of seclusion or restraint under this section:

1. Visual checks shall be made by trained staff every fifteen minutes; all such checks shall be documented by written comment.

2. Frequent monitoring shall occur regarding need for food, fluid, bathing, smoking and the use of the toilet. At least every two hours a ten minute release from seclusion or restraint shall be afforded the recipient, unless clearly contraindicated and documented.

3. Any continuous use of seclusion or restraint in excess of 24 hours must be authorized, in writing, by the Clinical Director, or equivalent, or designee. Twenty-four hour review and reauthorization shall be conducted by someone other than the person authorizing the original order. In such cases attempts shall be made to inform the recipient's guardian or legally responsible parent, if any.

4. A monthly summary of all occasions of seclusion, and of restraint in excess of 5 minutes, shall be reported to the Office of Advocacy.

K. The use of physical or mechanical restraint solely to assure proper bodily positioning shall not be subject to the requirements of this Section. Such use of restraint shall be by order of a physician and shall be reviewed every 30 days.

RIGHTS OF RECIPIENTS OF SERVICES

WHO ARE

CHILDREN IN NEED OF TREATMENT

PART B

RIGHTS IN INPATIENT AND RESIDENTIAL SETTINGS

MAINE DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION
BUREAU OF CHILDREN WITH SPECIAL NEEDS
STATE HOUSE STATION #40
AUGUSTA, MAINE 04333

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B. RIGHTS IN INPATIENT AND RESIDENTIAL SETTINGS

I. STATEMENT OF INTENT

These rules [Part B] apply to all inpatient and residential facilities, agencies and programs administered or funded by the Bureau or licensed by the Department which provide services to children in need of treatment. Part B should be read in conjunction with Part A, Rules of General Applicability.

II. PRIVACY AND HUMANE TREATMENT ENVIRONMENT

A. Recipients have the right to a humane psychological and physical environment within the facility.

B. The facility shall be designed to afford recipients comfort and safety, shall promote dignity and independence and shall be designed to make a positive contribution to the efficient attainment of treatment goals.

C. Each inpatient or residential facility shall provide at least:

1. nutritious food in adequate quantities;

2. access to or provision of adequate professional medical care;

3. a level of sanitation, ventilation and light which meets health standards;

4. a reasonable amount of space per person in sleeping areas;

5. a reasonable opportunity for physical exercise and recreation, including access to outdoor activities subject to the requirements of Section III, Individualized Treatment or Service Plan;

6. an area for private conversation with other recipients and family and friends;

7. an area for private telephone conversations;

8. areas which assure privacy for personal hygiene, counseling, physical examinations;

9. a secure and accessible storage area for the recipient's personal belongings; and,

10. opportunities for appropriate involvement in community activities subject to the requirements of Section III, Individualized Treatment or Service Plan.

D. Recipients have the right to be free from abuse, exploitation, or neglect.

1. Recipients shall not be subjected to humiliation or verbal abuse.

2. Recipients shall not be subjected to physical abuse and corporal punishment is expressly prohibited.

3. Recipients shall not be subjected to exploitation or neglect.

4. Any allegation of abuse, exploitation or neglect shall be immediately reported to the Chief Administrator of the facility or agency and to the Office of Advocacy, pursuant to Section VI (I), PART A, Grievances and the required investigatory agency pursuant to the Child and Family Services and Child Protection Act (22 MSRA Chapter 1071 s 4001).

E. Simple, understandable written rules setting the limits of recipient's behavior required for the protection of the group and individuals shall be established and made known to the recipient and to his guardian or legally responsible parent.

a. Such rules shall be posted in a prominent location.

F. Personal Property

1. Except as provided below, recipients have the right to retain and use personal property.

2. The use of personal property may be limited or items held in safekeeping only when the number or use of such items infringes upon the rights of other recipients, or poses a safety risk.

3. Each recipient shall have the right to manage his or her own personal financial affairs and funds unless:

a. such restrictions are a part of a plan of treatment pursuant to informed consent to treatment; or,

b. a conservator, guardian, legally responsible parent or representative payee has imposed the limitation; or,

c. court ordered restrictions exist; or,

d. restriction may be made to safeguard a recipient's assets during the pendency of any protective proceedings.

4. Any limitations on personal property or financial affairs shall be documented by a physician and receipts for all money or material held in safekeeping shall be given to the recipient or his guardian or legally responsible parent.

5. The facility or agency shall bear responsibility for any money or material held in safekeeping.

G. Searches. Every recipient has the right to be free from unnecessary searches of the person, of personal space or of common areas. A search shall only be conducted when staff have a reasonable belief that misappropriated articles are present or that certain items that would endanger the health or safety of a particular recipient or other recipients are present. Every search and the reasons therefor shall be documented.

III. INDIVIDUALIZED TREATMENT OR SERVICE PLAN

A. Recipients have the right to an individualized treatment or service plan.

B. Treatment or service plans shall be developed based upon an individualized assessment of the recipient's physical, psychological and social needs, as well as the recipient's expressed desires. Each facility or agency shall fully consider the least restrictive appropriate treatment and related services taking into account factors that are supportive of each recipient's exercise of his or her basic rights, consistent with each individual's needs and treatment requirements pursuant to this section. Such considerations shall include accommodation of particular needs involving communication and physical accessibility to all treatment programs.

C. Each recipient 14 or over has the right to be fully and actively involved in the development or revision of his treatment plan. Involvement of recipients who are younger shall be determined on a case by case basis, after assessment of the recipient's capacity to be involved. The exclusion of a recipient 14 or over, based on incapacity, developmental or mental, requires clinical director approval. Such exclusion shall be documented. The guardian or legally responsible parent shall be fully and actively involved in treatment planning to the maximum extent possible, given time and location constraints. Each agency, program or facility shall make good faith efforts, including 24 hour notice of any meeting, to involve guardians, or parents and such efforts shall be documented.

D. Treatment or service plans shall be developed in a timely manner. Initial plans shall be developed within 72 hours in inpatient or residential facilities. Comprehensive plans shall be developed within 10 working days in inpatient facilities and 20 working days in residential facilities.

E. The comprehensive treatment or service plan shall be developed by the treatment team, and be based upon a comprehensive assessment of the recipient. This plan shall contain but not, be limited to:

1. A statement of the recipient's specific problems and treatment needs.

    a. The treatment or service plan should include a description of any physical handicap and any accommodations necessary to provide the same or equal services and benefits as those afforded non-disabled individuals.

2. A description of short-term and long-range treatment goals, with a projection of when such goals will be obtained;

3. A statement of the rationale or reason for utilizing such treatment or meeting such goals;

4. A specification of treatment responsibility, including both staff, recipient and parent or guardian responsibility and involvement to attain treatment goals;

5. Criteria for discharge or release to a less restrictive treatment setting;

6. Documentation of current discharge or termination planning.

F. Limitations

1. Such a plan must include any limitation of rights or liberties. Such limitation shall be based upon professional judgment and may include a determination that the recipient is a danger to himself or to others absent such limitation. Such limitation shall meet criteria outlined for such limitation in other sections of these rules.

2. When such limitation occurs, the treatment plan shall address the specific limitation and such restriction shall be subject to periodic review. When possible, such limitation shall be time specific.

3. Whenever possible specific treatment shall be developed to address the basis of the limitation.

4. Documentation regarding the limitation shall include documentation as per F(1) through 3 above and shall include specific criteria for removal of the limitation.

G. A copy of the treatment or service plan shall, upon request, be given to each recipient, to a guardian or legally responsible parent, if any, and to a recipient's representative (if confidentiality has been waived pursuant to PART A, Section VIII).

H. All facilities or agencies shall maintain specific written guidelines describing their practices concerning development of treatment or service plans.

I. The treatment or service plan shall be reviewed and revised as frequently as is clinically indicated. Each facility, agency or program shall establish, by policy, a schedule for review of all recipient's treatment or service plans.

J. Discharge or termination

1. Each recipient and his guardian or legally responsible parent has the right to be informed of and referred to appropriate resources upon discharge or termination from a facility or program.

2. Each recipient with a comprehensive treatment or service plan has the right to a comprehensive discharge, or treatment or service plan, and to assisted referral to existing resources in such areas as transportation, housing, financial assistance, and mental health treatment. Recommendations made in discharge or termination plans shall not require the facility or department to provide recommended goods or service.

3. Upon discharge from an inpatient facility, the facility shall provide each recipient and legally responsible parent or guardian with a copy of his aftercare plan and a written list of his or her prescribed medication, dosage levels, schedules, and side-effects.

4. Notification

   a. The recipient's representative, upon request of the recipient, and the recipient's guardian, and legally responsible parent, shall be notified of and, if the representative, guardian or parent is available, involved in any discharge or termination planning. Involvement may include, but need not be limited to, participation in any discharge or termination planning meeting.

   b. The recipient's guardian and legally responsible parent shall be given notification of the recipient's discharge from an inpatient facility. Upon the request of an emancipated recipient, his representative shall be notified, if possible. At least twenty-four hour notice shall be given in planned discharges, if possible. In the case of other discharges, such notice shall be given as quickly as possible.

   c. A family member designated by the recipient shall, if possible, receive notification of the recipient's discharge from inpatient facilities, pursuant to subsection 4(b) above. The recipient shall be informed prior to such notification.

K. Exceptions

1. No treatment or service plan is required for recipients who solely received informal social support and recreation in drop-in mental health programs.

2. A recipient may choose not to be involved in developing his or her treatment discharge or termination plan and may refuse treatment discharge or termination planning or services.

   a. All such cases shall be documented in the recipient's permanent treatment record.

3. A recipient may be excluded from treatment or service planning if physically disruptive to the point that it is impossible to conduct a treatment planning session.
   a. All such cases shall be documented in the recipient's permanent treatment or service record.

4. A legally responsible parent or guardian shall be actively involved in the treatment, discharge or termination planning, to the maximum extent possible. A public guardian has an affirmative duty to be fully and actively involved in

treatment discussions and discharge planning. Exclusion from planning by professionals may only occur if the parent or guardian poses a documented danger to the physical or mental well-being of the recipient.

IV. INFORMED CONSENT TO TREATMENT

A. Recipients have the right to informed consent for all treatment.

B. Statement of purpose. This rule has the following purposes:

1. To promote respect for individual autonomy and recipient participation in decision-making;

2. To ensure that, whenever possible, the informed consent of a recipient or his legally responsible parent or guardian is obtained prior to treatment;

3. To avoid, whenever possible, forcible imposition of any treatment;

4. To provide reasonable standards and procedural mechanisms for determining when to treat a recipient absent his informed consent, consistent with applicable law; and

5. To ensure that the recipient is fully protected against the unwarranted exercise of the state's parens patriae power.

C. Treatment of recipients. Treatment may be provided to a recipient only when:

1. Informed consent for clinically competent emancipated minor for such treatment has been obtained from the recipient who is an emancipated minor [if recipient refuses to give such consent, see Rights of Recipients of Mental Health Services for procedure]; or

2. The recipient is an unemancipated minor, or clinically incapacitated minor, and the informed consent of the legally responsible parent or guardian has been obtained; or

3. The recipient is 14 or over and the treatment is psychotropic medication and the informed consent of the recipient in addition to that of his legally responsible parent or guardian, has been obtained; or

4. An emergency exists and the emergency procedures required by section IV E of this rule are observed.

D. Informed consent to treatment. Informed consent to treatment is obtained only if the recipient, under C(3) above, and his legally responsible parent or guardian possess capacity to make a reasoned decision regarding the treatment and the recipient, under C(3) above, and his legally responsible parent or guardian is provided with adequate information concerning the treatment; and the recipient, under C(3) above, and his legally responsible parent or guardian makes a voluntary choice in favor of the treatment. Informed consent must be documented in each case in accordance with this section.

1. Capacity. Capacity means sufficient understanding to comprehend the information outlined in section D(2) and to make a responsible decision concerning a particular treatment.

   There is a general assumption in the law that a minor is legally incapacitated to make most health care decisions. However, legal incapacity is not synonymous with clinical or developmental capacity to participate in a treatment decision. Where non-emergency intrusive medical treatment is at issue, the refusal of a mature (+14) minor must be honored.

2. Adequate information. The licensed, certified or other qualified mental health professional recommending a particular treatment shall provide to the recipient, if appropriate under C(3) above, and his legally responsible parent or guardian, all information relevant to the formulation of a reasoned decision concerning such treatment. The recipient, and his legally responsible parent or guardian, shall have the right to have a person of his choice present during the presentation of this information, provided that the nominee can be available within 48 hours, or within such other reasonable period as may be agreed upon; and the recipient, and his legally responsible parent or guardian, shall be informed of this right. The information may be provided orally or in writing, shall be communicated in terms designed to be comprehensible to a lay person, and shall include, without limitation:

   a. An assessment of the recipient's condition and needs;

   b. The nature of the proposed treatment, and a statement of the reasons why the professional believes it to be indicated in the recipient's case;

   c. The expected benefits of the treatment, and the known risks which it entails, including the common side-effects of a particular medication;

   d. The anticipated duration of the treatment;

   e. A statement of reasonable alternatives to the proposed treatment, if any;

   f. Information as to where the recipient and his legally responsible parent or guardian may obtain answers to further questions concerning the treatment;

   g. A clear statement that the recipient, where appropriate, has the right to give or withhold consent to the proposed treatment.

3. Voluntary choice. Consent to treatment must be given willingly in all cases, and may not be obtained through coercion or deception. Special care shall be taken to assure that consent is voluntary where the recipient's status as an involuntary inpatient militates against truly voluntary consent.

A recipient's or parent's or guardian's initial refusal of treatment shall not preclude renewed attempts to obtain willing consent; and a recipient's or parent's or guardian's initial willing consent shall not preclude him from validly withdrawing such consent at any time before or during treatment.

4. Documentation. The informed consent of a recipient and his legally responsible parent or guardian to a particular treatment shall be documented to show:

   a. From whom consent is obtained, whether recipient, legally responsible parent or guardian;

   b. If consent is given by the recipient, a signed statement that the recipient possesses capacity to give informed consent;

   c. That adequate information, including at a minimum all the elements listed in section D(2) of this rule, was provided;

   d. The signature of the legally responsible parent or guardian and, where applicable under C(3) above, the recipient, indicating consent.

   e. Exception to Written Consent

      i. In cases of unanticipated treatment needs, the informed consent of a legally responsible parent or guardian may be obtained by telephone; but such oral consent shall be confirmed in writing in accordance with this section as soon as practicable.

E. Involuntary Emergency Treatment

1. Emergency means a situation where, as a result of a recipient's behavior due to mental illness, there exists an imminent danger of bodily injury to the recipient or to others.

2. Declaration of emergency. A licensed physician may declare an emergency when he reasonably believes an emergency exists as defined in subsection G (1) above, and when

   a. A recognized form of treatment is required immediately to ensure the physical safety of the recipient or of others; and

   b. No-one legally entitled to consent on the recipient's behalf is available; and

   c. A reasonable person concerned for the physical safety of the recipient or of others would consent under the circumstances.

3. Documentation. If a physician declares an emergency, documentation of the emergency shall be immediately entered into the recipient's permanent treatment record, and endorsed, within 24 hours, by the physician.

4. Emergency treatment. Following a declaration of emergency pursuant to subsection E(1) above, a licensed physician or a person acting under his direction may administer a recognized form of treatment over the recipient's objection and absent his informed consent. Treatment imposed following a declaration of emergency may continue for a period not to exceed 72 consecutive hours.

5. Notice and review. The administrative head of the facility and the Clinical Director or his equivalent shall be notified, as soon as possible, of any emergency. Any renewal of emergency treatment requires review by and the written authorization of the Clinical Director of a mental health institute or his equivalent in any other mental health facility.

V. FREE ASSOCIATION AND COMMUNICATION

A. Recipients have the right to freedom of association and communication.

B. Recipient's Right to Visitors

1. Each facility shall establish the most liberal visiting policies which are administratively feasible.

a. Each inpatient facility shall establish regular daily visiting hours. Such hours shall be prominently posted in the facility. Visitation during these hours shall not require prior notification or request by either the recipient or the visitor except when such visits would conflict with regularly scheduled therapeutic activities of which the recipient has been notified.

b. Each residential facility shall determine the most liberal and appropriate times for visitation with parents/guardians. Such information shall be made available to recipients and parents or guardians.

c. Recipients have the right to refuse or terminate visitation from specific visitors or all visitors.

2. Suitable areas shall be provided by the facility for privacy during visitation.

3. The facility shall provide unrestricted visitation by a recipient's attorney, clergy, professional service provider or advocate of the rights protection or advocacy services of the Maine mental health system, at any reasonable time.

4. Exceptions

a. When a physician or licensed clinical psychologist treating a recipient determines, in consultation with the treatment team, that denial of access to a particular visitor or visitors, except those visitors listed in subsection 3 above, is necessary for treatment, or for security purposes in the case of forensic recipients, such professional may, for a specific, limited and reasonable period of time, deny such access.

i. A written order denying such visitation including the reasons for the denial, shall be entered into the recipient's permanent treatment record.
ii. Any limitation of this right shall be explained to the recipient and his legally responsible parent or guardian and to the specifically restricted visitor. Those same people shall be immediately notified, if possible, when the restrictions on visitation have been lifted.
iii. Any limitation on visitation may be appealed by the recipient or his legally responsible parent or guardian by the specifically restricted visitor, if aggrieved, through the grievance mechanism as outline in Section V.

C. Recipient's Right to Communicate by Mail

1. No facility shall censor, delay or restrict incoming or outgoing letters or packages. Incoming letters and packages shall be delivered sealed and unopened to the recipient, and outgoing letters and packages shall be mailed in like manner.

2. Writing materials and postage funds adequate to mail at least one letter per day shall be provided to inpatient recipients who are unable to procure such items.

3. Exceptions

a. If staff of a facility reasonable believes that mail contains contraband, such mail may, upon the written order of a physician or Chief Administrative Officer, be subjected to physical examination in the recipient's presence if appropriate.

b. Any illegal items found during such an examination may be confiscated by the facility.

c. Any other contraband shall be held in safekeeping, and returned to the recipient upon discharge, except that no medication shall be released without the authorization of a physician.

d. Any exception to the right to communicate by mail under subsection (a) above must be explained to the recipient. The justification for any such exception, and an itemized list of any materials confiscated must be documented in the recipient's permanent treatment record.

e. Additional procedures may be developed to assure security in the cases of forensic recipients.

D. Recipient's Right to Communicate by Telephone

1. Each inpatient and residential treatment facility shall provide all recipients reasonable access to telephones for

placing and receiving confidential calls, including access to telecommunication devices for the deaf, when necessary.

2. Each inpatient and residential treatment facility shall assure, at any reasonable time, a recipient's access to a telephone for contact with a particularly designated family member, clergy, professional service provider, or personally designated representative. Telephone access to an advocate of the rights protection and advocacy service or to an attorney shall be assured at all times.

3. Each inpatient facility shall provide use of telephones at no charge, or telephone usage funds in reasonable amounts, to recipients who would otherwise be unable to communicate with family or friends by telephone.

4. Exceptions

a. Upon the recommendation of a physician or licensed psychologist, the chief administrator of the facility may restrict a recipient's right to communicate by telephone when the facility is notified, by a person receiving calls, that the person is being harassed and wishes the calls to be curtailed or halted. Telephone restrictions shall apply only to those persons so notifying the facility.

b. Upon the recommendation of a physician or licensed psychologist, the chief administrator of the facility may restrict or monitor a recipient's right to communicate by telephone, if it is determined that the recipient has made obscene or threatening phone calls, or for other security reason in the case of forensic recipients.

c. If a physician or licensed psychologist determines, in consultation with the treatment team, that restrictions on making or receiving telephone calls, except to those listed in 2 above, is necessary for treatment purposes, the physician or licensed clinical, psychologist may restrict the recipient's right to communicate for a specific limited and reasonable period of time, not to exceed one week without reauthorization.

i. Any such restriction shall become incorporated in the recipient's treatment or service plan, and be a focus of treatment, pursuant to Section IV(F)

ii. An explanation of any such restrictions shall be given to the recipient's regular callers as designated by the recipient. The recipient's designated regular callers, so requesting, shall be immediately notified, if possible, when the restrictions on communication by telephone are lifted.

iii. Any limitation on telephone calling may be appealed by the recipient or his legally responsible parent or guardian or specifically restricted caller, if aggrieved, through the grievance mechanism as outlined in Part A.

RIGHTS OF RECIPIENTS OF SERVICES

WHO ARE

CHILDREN IN NEED OF TREATMENT

PART C

RIGHTS IN OUTPATIENT SETTINGS

MAINE DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION
BUREAU OF CHILDREN WITH SPECIAL NEEDS
STATE HOUSE STATION #40
AUGUSTA, MAINE 04333

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I. STATEMENT OF INTENT

These rules [Part C] are applicable to all outpatient facilities, agencies or programs that are funded by the Bureau or licensed by the Department of Mental Health & Mental Retardation to provide services to children in need of treatment. Part C should be read in conjunction with Part A, Rules of General Applicability

II. INDIVIDUALIZED TREATMENT OR SERVICE PLAN

A. Recipients have the right to an individualized treatment or service plan.

B. Treatment or service plans shall be developed based upon an individualized assessment of the recipient's physical, psychological and social needs, as well as the recipient's expressed desires. Each facility or agency shall fully consider the least restrictive appropriate treatment and related services taking into account factors that are supportive of each recipient's exercise of his or her basic rights, consistent with each individual's needs and treatment requirements pursuant to this section. Such considerations shall include accommodation of particular needs involving communication and physical accessibility to all treatment programs.

C. Each recipient 14 or over has the right to be fully and actively involved in the development or revision of his treatment or service plan. Involvement of recipients who are younger shall be determined on a case by case basis, after assessment of the recipient's capacity to be involved. The exclusion of a recipient 14 or over, based on incapacity, developmental or mental, requires clinical director approval. Such exclusion shall be documented. The guardian or legally responsible parent shall be fully and actively involved in treatment planning to the maximum extent possible, given time and location constraints. Each agency, program or facility shall make good faith efforts, including 24 hour notice of any meeting, to involve guardians, or parents and such efforts shall be documented.

1. Each agency program or facility shall make good faith efforts, including 24 hour notice of any treatment planning meetings, to involve guardians, representatives or legally responsible parents and such efforts shall be documented.

D. Treatment or service plans shall be developed in a timely manner. Comprehensive plans shall be developed within three visits or 10 working days in outpatient agencies.

E. A comprehensive treatment or service plan shall be developed by the treatment team, based upon a comprehensive assessment of the recipient. The plan shall contain but not be limited to:

1. A statement of the recipients specific problems and treatment needs.

a. The treatment or service plan should include a description of any physical handicap and any accommodations necessary to provide the same or equal services and benefits as those afforded non-disabled individuals.

2. A description of short-term and long-range treatment goals with projection of when such goals will be obtained;

3. A statement of the rationale or reason for utilizing such treatment or meet such goals;

4. A specification of treatment responsibility, including both staff and recipient responsibility and involvement to attain treatment goals;

5. Documentation of current termination planning.

F. A copy of the treatment or service plan shall, upon request, be given to each recipient, to a guardian or legally responsible parent, if any, and to recipient's representative (if confidentiality has been waived pursuant to Part A Section VIII).

G. All agencies shall maintain specific written guidelines describing their practices concerning development of treatment or service plans.

H. The treatment or service plan shall be reviewed and revised as frequently as is clinically indicated. Each facility, agency or program shall establish, by policy, a schedule for review of all recipient's treatment or service plans.

I. Termination

1. Each recipient and his guardian or legally responsible parent has the right to be informed of and referred to appropriate resources upon termination from a program.

2. Each recipient terminated from the outpatient agency after three visits or ten working days or longer term of treatment has the right to a comprehensive termination plan, and to assisted referral to existing resources in such areas as transportation, housing, financial assistance, and mental health treatment. Recommendations made in termination plans shall not require the agency or department to provide recommended goods or service.

3. Upon termination from an outpatient agency, the facility shall provide each recipient and legally responsible parent or guardian with a copy of his aftercare plan and a written list of his or her prescribed medication, dosage levels, schedules, and side effects.

4. Notification

a. The recipient's representative, upon request of the recipient, and the recipient's guardian, and legally responsible parent, shall be notified of and, if the representative, guardian or parent is available, involved in any termination planning. Involvement may include, but no be limited to, participation in any termination planning meeting.

J. Exceptions

1. No treatment or service plan is required for recipients who solely received informal social support and recreation in drop-in mental health programs.

2. A recipient may choose not to be involved in developing his or her treatment or service plan and may refuse termination planning.

a. All such cases shall be documented in the recipient's permanent treatment record.

3. A recipient may be excluded from treatment or service planning if physically disruptive to the point that it is impossible to conduct a treatment or service planning session.

a. All such cases shall be documented in the recipient's permanent treatment or service record.

4. A legally responsible parent or guardian shall be actively involved in the treatment, discharge or termination planning, to the maximum extent possible. A public guardian has an affirmative duty to be fully and actively involved in treatment discussions and discharge planning. Exclusion from planning by professionals may occur if the parent or guardian poses a documented danger to the physical or mental well-being of the recipient.

III. INFORMED CONSENT TO TREATMENT

A. Recipients have the right to informed consent for all treatment.

B. Statement of purpose. This rule has the following purposes:

1. To promote respect for individual autonomy and recipient participation in decision-making;

2. To ensure that, whenever possible, the informed consent of a recipient or his legally responsible parent or guardian is obtained prior to treatment;

3. To avoid, whenever possible, forcible imposition of any treatment;

4. To provide reasonable standards and procedural mechanisms for determining when to treat a recipient absent his informed consent, consistent with applicable law; and

5. To ensure that the recipient is fully protected against the unwarranted exercise of the state's parens patriae power.

C. Treatment of recipients. Treatment may be provided to a recipient only when:

1. Informed consent for clinically competent emancipated minor for such treatment has been obtained from the recipient who is an emancipated minor [if recipient refuses to give such consent, see Rights of Recipients of Mental Health Services for procedure]; or

2. The recipient is an unemancipated minor, or clinically incapacitated minor, and the informed consent of the legally responsible parent or guardian has been obtained; or

3. The recipient is 14 or over and the treatment is psychotropic medication and the informed consent of the recipient in addition to that of his legally responsible parent or guardian, has been obtained; or

4. An emergency exists and the emergency procedures required by section III (E) of this rule are observed.

D. Informed consent to treatment. Informed consent to treatment is obtained only if the recipient, under C(3) above, and his legally responsible parent or guardian possess capacity to make a reasoned decision regarding the treatment; and the recipient under C(3) above, and his legally responsible parent or guardian is provided with adequate information concerning the treatment; and the recipient, under C(3) above and his legally responsible parent or guardian makes a voluntary choice in favor of the treatment. Informed consent must be documented in each case in accordance with this section.

1. Capacity. Capacity means sufficient understanding to comprehend the information outlined in section D(2) and to make a responsible decision concerning a particular treatment.

There is a general assumption in the law that a minor is legally incapacitated to make most health care decisions. However, legal incapacity is not synonymous with clinical or developmental capacity to participate in a treatment decision, where non-emergency intrustive medical treatment is at issue, the refusal of a mature (+14) minor must be honored.

2. Adequate information. The licensed, certified or other qualified mental health professional recommending a particular treatment shall provide to the recipient under C(3) above and his legally responsible parent or guardian, all information relevant to the formulation of a reasoned decision concerning such treatment. The recipient and his legally responsible parent or guardian, shall have the right to have a person of

his choice present during the presentation of this information, provided that the nominee can be available within48 hours, or within such other reasonable period as may be agreed upon; and the recipient, or his legally responsible parent or guardian, shall be informed of this right. The information may be provided orally or in writing, shall be communicated in terms designed to be comprehensible to a lay person, and shall include, without limitation:

a. An assessment of the recipient's condition and needs;

b. The nature of the proposed treatment, and a statement of the reasons why the professional believes it to be indicated in the recipient's case;

c. The expected benefits of the treatment, and the known risks which it entails, including the common side-effects of a particular medication;

d. The anticipated duration of the treatment;

e. A statement of reasonable alternatives to the proposed treatment, if any;

f. Information as to where the recipient may obtain answers to further questions concerning the treatment;

g. A clear statement that the recipient has the right to give or withhold consent to the proposed treatment.

3. Voluntary choice. Consent to treatment must be given willingly in all cases, and may not be obtained through coercion or deception.

A recipient or guardian's or legally responsible parent's initial refusal of treatment shall not preclude renewed attempts to obtain willing consent; and an initial willing consent shall not preclude him from validly withdrawing such consent at any time before or during treatment.

4. Documentation. The informed consent of a recipient and his legally responsible parent or guardian to a particular treatment shall be documented to show:

a. From whom consent is obtained, whether recipient, legally responsible parent or guardian;

b. If consent is given by the recipient, a signed statement that the recipient possesses capacity to give informed consent;

c. That adequate information, including at a minimum all the elements listed in subsection D(2) of this rule, was provided;

d. The signature of the legally responsible parent or guardian, and where applicable under C(3) above, the signature of the recipient, indicating consent, in cases where psychotropic medication is prescribed.

5. Exception to Written Consent

In cases of unanticipated treatment needs, the informed consent of a legally responsible parent or guardian may be obtained by telephone; but such oral consent shall be confirmed in writing in accordance with this section as soon as practicable.

E. Involuntary Emergency Treatment

1. Emergency means a situation where, as a result of a recipient's behavior due to mental illness, there exists an imminent danger of bodily injury to the recipient or to others.

2. Declaration of emergency. A licensed physician may declare an emergency when he reasonably believes an emergency exists as defined in subsection G (1) above, and when

a. A recognized form of treatment is required immediately to ensure the physical safety of the recipient or of others; and

b. No-one legally entitled to consent on the recipient's behalf is available; and

c. A reasonable person concerned for the physical safety of the recipient or of others would consent under the circumstances.

3. Documentation. If a physician declares an emergency, documentation of the emergency shall be immediately entered into the recipient's permanent treatment record, and endorsed, within 24 hours, by the physician.

4. Emergency treatment. Following a declaration of emergency pursuant to subsection E(1) above, a licensed physician or a person acting under his direction may administer a recognized form of treatment over the recipient's objection and absent his informed consent. Treatment imposed following a declaration of emergency may continue for a period not to exceed 72 consecutive hours.

5. Notice and review. The administrative head of the facility and the Clinical Director or his equivalent shall be notified, as soon as possible, of any emergency. Any renewal of emergency treatment requires review by and the written authorization of the Clinical Director of a mental health institute or his equivalent in any other mental health facility.

IV. FREEDOM FROM SECLUSION AND RESTRAINT

Recipients shall not be held in locked seclusion in an outpatient setting.

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